IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.15454 of 1998
W.M.P.No.23302 of 1998

Concord Industries,
251 (Old 98) Old Mahabalipuram Road,
Sozhanganallur,
Chennai - 600 119.
rep.by its partner,
Sanjay Ramaswami ... Petitioner

Vs.

1. The Executive officer,
Sozhanganallur Panchayat Town,
Chennai - 600 119.

2. President,
Town Panchayat,
Town of Sozhanganallur,
Chennai - 600 119. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records of the first respondent relating to the assessment No.278 dated 23.9.1998 towards the property tax of the factory premises of Concord Industries, situate at No.251 (Old 98), Old Mahabalipuram Road, Sozhanganallur, Chennai - 600 119, quash the same and issue a writ of mandamus forbearing the respondents from proceeding further with the assessment until the Panchayat Town is duly constituted a fresh tax is levied and a fresh assessment is made in accordance with law after issuing due and proper notice to the petitioner.

For Petitioner : Mr.Umashankar

For Respondent : Mr.G.Sankaran
Government Advocate

O R D E R

By consent of the learned counsel appearing for the petitioner as well as the learned Government Advocte appearing for the respondents, the writ petition is taken up for final disposal.

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2. Prayer in the writ petition is to quash the the assessment No.278 dated 23.9.1998 towards the property tax of the factory premises of Concord Industries, situate at No.251 (Old 98), Old Mahabalipuram Road, Sozhanganallur, Chennai - 600 119, and to forbear the respondents from proceeding further with the assessment until the Town Panchayat is duly constituted and a fresh tax is levied and fresh assessment is made in accordance with law after issuing due and proper notice to the petitioner.

3. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner is a partnership firm carrying on business of pulverising and manufacturing pesticide formulations and grinding other minerals. The registered Office of the partnership firm is at 54-A, Justice V.Ramasamy Road, Kamaraj Avenue, Adyar, Chennai-20, and its factory is located at No.251 (Old No.98) Old Mahabalipuram Road, Sozhanganallur, Chennai -119.

(b) The revenue village of Sozhanganallur was classified and constituted as Town Panchayat under the provisions of the Tamil Nadu Panchayat Act, 1958. The Town Panchayat levied house tax in respect of factory building at Rs.1,890/- per year and the petitioner was paying the same.

(c) In April, 1994, petitioner received a notice dated 21.4.1994 issued under section 161 of the Tamil Nadu Panchayat Act, 1958, stating that the property had been assessed from 1987-88 onwards at Rs.7,560/- per year and from the year 1992-93 onwards the tax payable was Rs.7,920/- per year. Petitioner protested the said demand stating that no notice of any revision was given to the petitioner and the increase was illegal and contrary to the provisions of the Tamil Nadu Panchayat Act, 1958.

(d) Petitioner received another notice dated 23.3.1995 issued under Rule 36 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920, as amended, for which the petitioner sent a reply. Respondent thereafter issued lawyer's notice on 24.8.1995, wherein it was stated that the tax was revised under the quinquinnial revision at Rs.7,560/- per year and a revision notice was served on the staff/employee of the petitioner firm on 19.4.1998. The name of the staff on whom the notice was served and later on demand notices were served on 8.12.1998 and 2.3.1989 to one M.Muthiah.

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(e) It is the case of the petitioner that the said Muthiah was never a member of the staff of the firm and he was only a temporary menial daily worker in the factory and he was not employed subsequent to 1986. Petitioner sent a reply in September, 1995, to the lawyer's notice, refuting all the allegations. No reply was received thereafter, however a distraint notice dated 29.6.1998 was received, for which the petitioner submitted reply on 29.6.1998 and 3.7.1998, for which no reply is received. The respondents again issued a distraint warrant dated 23.9.1998 and

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stated that unless the tax is paid by 29.9.1998, the articles at the residents of the Managing Partner will be distrained after 11.00 a.m. on 5.10.1998.

(f) The said distrained order dated 23.9.1998 is challenged in this writ petition on the ground that the provisions of the Tamil Nadu Panchayat Act, 1958, and the rules relating to assessment and collection of tax applicable to the Town Panchayat were not followed and the rules provide for general revision once in five years and also certain procedures to be followed were not followed. It is also the case of the petitioner that the respondents shall publish a notice in at least one Tamil newspaper, on the notice board of the Panchayat office and in such other places within the Panchayat limits as may be specified by the Panchayat and by beat of drums of its intention, to fix reasonable period not less than one month for submission of objections and only after considering the objections, revision can be made.

(g) It is also the case of the petitioner that if there is enhancement in the assessment of tax, the Executive Authority shall cause intimation by a special notice to be served on the owner or occupier of the house concerned and for submitting objections 60 days time shall be given from the date of service of such notice.

(h) 'Owner' is defined under Section 2(a) of the Act. 'Occupier' is not defined in the Tamil Nadu Panchayat Act, 1958, but is defined under section 3 of the Tamil Nadu District Municipalities Act, 1920, wherein it is stated that 'any person for the time being paying or liable to pay to the owner, the rent or any portion of the rent of the land or building or part of the same in respect of which the word is used.' On the basis of the said definition it is contended that the alleged service of notice on one Muthirah is not service either to the owner or occupier.

(i) It is also contended that there is steep increase in the tax, that is, from Rs.1,890 per year prior to 1987-1988 to Rs.7,560/- per year from 1987-1988 onwards, which is equal to 400 percentage of increase and there is no rhyme or reason and the mandatory procedures for increase of the tax is not followed. In the year 1994, the Town Panchayats were brought under the District Municipalities Act and therefore the impugned notice issued under the Tamil Nadu Panchayat Act, 1958, is unsustainable and the respondents can issue notice only under the Tamil Nadu District Municipalities Act, 1920.

4. The respondents have filed counter affidavit wherein it is stated that as per the provisions of the rules, resolutions were passed by the Town Panchayat for reviewing the property tax and the same was published in the newspaper. The notice of the proposed revision was served to one of the staff of the petitioner firm viz., Thiru M.Muthiah and necessary signatures were also obtained from him for having received the special notice and the petitioner having not filed any objection/revision seeking reduction of property tax, a demand notice was

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served on the said Muthiah, who is a staff of the petitioner firm and even thereafter petitioner failed to remit the property tax. Since the petitioner has not made any representation against the revision of property tax within the stipulated time, he lost the chance for getting reduction in property tax. It is further stated that notice was served on the petitioner pertaining to the year 1987-88 (second half year), for which also no response was shown by the petitioner. Therefore attachement notice was served on the petitioner on 23.9.1999. Despite the same, petitioner did not pay the property tax. It is also stated in para 9 of the counter affidavit that had the petitioner felt that the levy of property tax is in excess, he could have conveyed the same through his representation within a period of sixty days from the date of levying tax and a special notice having been served on the petitioner and the petitioner having failed to make any representation, the revision of property tax was confirmed.

5. Since the controversy is in respect of service of notice and the non-receipt of revision/objection, the learned counsel for the petitioner as well as the learned Government Advocate addressed their argument on that aspect alone, without going into the merits of the matter.

6. As the notice was served to one Muthiah, who according to the respondent is one of the staff of the petitioner firm, which is denied by the petitioner, there is a real controversy with regard to service of notice on the owner or occupier of the premises. Even assuming that the said Muthiah was in employment of the petitioner firm, he cannot be treated as an 'occupier' of the building as he was only an employee. Since it is specifically pleaded and argued that no notice is served to the petitioner, I am of the view that the respondents have not served notice as contemplated under the provisions of the Act either under the Tamil Nadu Panchayat Act, 1958, or under the Tamil Nadu District Municipalities Act, 1920. Therefore, the impugned order is liable to be set aside and accordingly set aside, without expressing any opinion on the merits of the contentions of either party.

7. The learned counsel appearing for the petitioner during his arguments submitted that the present Managing Partner of the petitioner partnership firm is Mrs.Sarojini Ramasamy. The respondents are directed to issue notice to the petitioner firm with regard to revision of property tax for the periods in question within two weeks from the date of receipt of copy of this order in the name of the present Managing partner of the Petitioner partnership firm to the residential address viz., Mrs.Sarojini Ramasamy, No.54-A, Justice V.Ramasamy Road, Kamaraj Avenue, Adyar, Chennai-20. It is open to the petitioner firm to submit its objections, if any, within two months and on receipt of such objection/representation, the respondents are directed to consider the same and pass orders thereon on merits and in accordance with law, in any event within three months from the date of receipt of such representation/objection.

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The writ petition is disposed of in the above terms. No costs. Connected miscellaneous petition is closed.

vr/

Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

To

1. The Executive officer, Sozhanganallur Panchayat Town,
   Chennai - 600 119.

+ One cc to Mr. M. Umashankar, Advocate SR 9292
AVA (co)
sg 22/2/07

Order in

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